

CAUSE NO. DC-16-09067

Angie Avina

SAN JOSE PACIFICA REAL ESTATE,
S DE R.L. DE C.V. and REAL ESTATE
PACIFICA RT, S. DE R.L. DE C.V.

Plaintiffs

v.

FIDELITY NATIONAL TITLE
INSURANCE COMPANY

Defendant

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs SAN JOSE PACIFICA REAL ESTATE, S. de R.L. de C.V. and REAL ESTATE PACIFICA RT, S. de R.L. de C.V. (collectively "**Plaintiffs**") file this Original Petition against Defendant FIDELITY NATIONAL TITLE INSURANCE COMPANY ("**Fidelity**") as follows:

I. DISCOVERY PLAN

1. Plaintiffs intend to conduct discovery under Level Two (2) pursuant to Texas Rule of Civil Procedure 190.3.

II. RULE 47 STATEMENT FOR MONETARY RELIEF

2. Plaintiffs seek monetary relief of \$100,000.00 or less and non-monetary relief.

III. PARTIES

3. Plaintiff San Jose Pacifica Real Estate, S. de R.L. de C.V. is a Mexican limited liability corporation.

4. Plaintiff Real Estate Pacifica Rt, S. de R.L. de C.V. is a Mexican limited liability corporation.

5. Defendant Fidelity National Title Insurance Company is a California corporation

doing business in the State of Texas. It may be served through its registered agent C T Corporation System, 1999 Bryan St. Suite 900, Dallas TX 75201-3136.

IV. JURISDICTION AND VENUE

6. Venue in Dallas County, Texas, is proper pursuant to Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events and/or omissions giving rise to the claims asserted herein occurred in Dallas County, Texas.

7. The state of Texas has general jurisdiction over Fidelity because Fidelity conducts substantial business in the state of Texas and specific jurisdiction over Fidelity because the title policy giving rise to this lawsuit was issued in the state of Texas by Fidelity's predecessor-in-interest.

V. FACTUAL BACKGROUND

8. The dispute in this lawsuit relates to lenders title policy No. G47-0685825 issued by Lawyers Title Insurance Corporation on or about April 13, 2007 ("**the Policy**"). Lawyers Title Insurance Corporation was purchased by Fidelity in 2008 and merged with Fidelity on April 6, 2010. Therefore, Fidelity is successor-in-interest to Lawyers Title Insurance Corporation with regard to obligations under the Policy.

9. The original company insured under the Policy was Lehman Brothers Holdings, Inc. ("**Lehman**"), but the terms of the Policy also named successors and assigns of Lehman's interest in the indebtedness secured by the mortgage insured by the Policy as insureds under the Policy. Lehman assigned FCCD Limited a partial participation interest in the indebtedness in 2007. Lehman assigned its remaining interest in the indebtedness insured by the Policy to State Street Bank and Trust Co. in approximately June 2009. State Street Bank and Trust Co. subsequently assigned additional interests in the indebtedness insured by the Policy to FCCD

Limited in April 2011.

10. The Policy relates to indebtedness secured by approximately seven hundred and fifty (750) acres of property located in Cabo San Lucas, Baja Sur, Mexico (“**Property**”). FCCD Limited initiated a foreclosure proceeding on the Property and the beneficial interest in the foreclosed property was subsequently assigned to the Plaintiffs.

11. FCCD, Limited and Plaintiffs have sought confirmation from Fidelity of continuing coverage under the Policy, but Fidelity has failed to provide such confirmation.

12. The foregoing conduct gives rise to the following cause of action.

VI. CAUSE OF ACTION

A. DECLARATORY JUDGMENT

13. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

14. Plaintiffs are insureds under the Policy as a result of being successors-in-interest and/or assigns of Lehman’s interest in the indebtedness secured by the Policy.

15. Nonetheless, Fidelity has failed or refused to confirm Plaintiffs’ rights under the Policy.

16. Therefore, Plaintiffs seek a declaration that they are insureds under the Policy and that they have continuing coverage under Policy.

VII. CONDITIONS PRECEDENT

17. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

18. All conditions precedent to Plaintiffs’ recovery have been performed or have occurred.

VIII. ATTORNEYS' FEES

19. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

20. Plaintiffs have been compelled to retain Brian W. Zimmerman of the law firm of Zimmerman, Axelrad, Meyer, Stern & Wise, P.C. to represent them in connection with this action. Plaintiffs seek to recover their attorney's fees and costs pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

IX. JURY DEMAND

21. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

22. Plaintiffs demand a jury trial and have tendered the appropriate fee.

X. PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiffs San Jose Pacifica Real Estate, S. de R.L. de C.V. and Real Estate Pacifica Rt, S. de R.L. de C.V., pray as follows:

- a. That this Court enter Judgment in favor of Plaintiffs against Fidelity National Title Insurance Company;
- b. That this Court declare that Plaintiffs are insureds under the Policy and that they have continuing coverage under Policy;
- c. That this Court award Plaintiffs their reasonable and necessary attorney's fees and costs for the handling of this matter, including all appeals taken in this matter, together with costs of Court;
- d. That this Court award Plaintiffs post-judgment interest at the maximum rate allowed by law; and
- e. That this Court grants Plaintiffs such other and further relief, in law and in equity, to which they may be justly entitled.

Respectfully submitted,

**ZIMMERMAN, AXELRAD,
MEYER, STERN & WISE, P.C.**

By: /s/ **Brian W. Zimmerman**
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ATTORNEYS FOR PLAINTIFFS